Civil Misc.Appeal No.14/2002
Smt. Asha Kanwar Vs. Bhanwar Singh & Ors

Date of Order ::: 21 /09/05

Hon'ble Mr. Justice Ajay Rastogi

Mr.Ashwani Kumar Sharma, for appellant (claimaints)
Mr Tripurari Sharma, for respondent Ins.Co.

This appeal is preferred by claimants for enhancement of compensation arising out of Award dt.12/07/99 passed by Motor Accident Claims Tribunal, Jaipur City, Jaipur.

Claimants are mother and wife of Amar Singh who was driver working in Motor Garage. He was 29 years of age and while he was going on his scooter, on account of rash & negligent driving of truck No.RSD 2998, he met with an accident and died on 29/08/98. As per his salary certificate (Ex.21), total monthly salary was Rs.4199/- out of which 1/3rd deduction was made towards his personal expenses and Rs.3,000/- was considered to be monthly financial dependency of the family. The Tribunal after taking note of multiplier of 14, ordered for compensation to a sum of Rs.5,26,000/- including Rs.10,000/- towards love, affection & consortium to each of the claimants.

Shri Ashwni Sharma, Counsel for appellant urged that as per Schedule appended to the Motor Vehicles Act, 1988 ("***the Act***"), in ordinary course, multiplier of 18 should be adopted by the Tribunal looking to 29 years' age of deceased, and no justification has come on record contrarily to adopt multiplier of 14; and that apart, compensation towards love, affection & consortium is also on lower side, which also requires interference.

Shri Tripurari Sharma, Counsel for respondent

(Insurance Company) urged that basic pay of deceased was Rs.2125/- and all rest were admissible allowances, which in ordinary course could not have been computed while determining the compensation, as such the Tribunal has committed an error in taking into consideration salary of Rs.4199/- per month while computing compensation, and placed reliance on the decision of Apex Court in **Asha & Ors Vs. United India Insurance Co.Ltd** (*Civil Appeal No.7897 of 2001 decided on 03/09/03) and* in such circumstances, multiplier even if wrongly adopted by Tribunal, does not require interference by this Court.

I have considered the contentions advanced by the parties and perused the findings recorded by the Tribunal. It is not in dispute that deceased was 29 years of age and total salary payable to him at the time when the deceased was alive was Rs.4199/- per month, and allowances like special pay, dearness allowance and other admissible allowances were payable to him as is evident from salary certificate (Ex.21). Salary includes pay & all admissible allowances, and his actual pay package was of Rs.4199/- at the relevant time.

In my opinion, compensation has to be computed on the basis of salary (pay & allowances) received by the deceased at the time when he was alive, since it was a financial loss which his family has suffered. The judgment on which Counsel for respondent placed reliance, was a case where certain deductions were made towards LIC, Society charges & HBA etc, and the contention of the claimants was that these deductions are to be considered as a part of his salary, which was negated by the Apex Court for the reason that the loss suffered by the

claimant is of the amount which they would have received at the time when the deceased was alive but that is not a situation in the present case and it is of no assistance to the respondents.

As per Schedule appended to the Act, multiplier in ordinary course would have been of 18, instead of 14 as adopted by the Tribunal, and accordingly claimants are entitled to compensation after adopting multiplier of 18 as per the Schedule. So far as the amount of compensation awarded towards love, affection & consortium is concerned, it has adequately been awarded by the Tribunal and requires no interference by this Court.

Consequently, this appeal is partly allowed and the claimants are entitled for enhanced compensation for a sum of Rs.1,44,000/- (Rs.6,70,000/- minus Rs.5,26,000), which shall also carry interest @ 9% p.a., from the date of filing of claim application till its actual payment. Enhanced compensation with interest shall be deposited by Insurance Company through A/c payee bank draft/pay order before the Tribunal within two months.

The Tribunal is further directed to deposit the enhanced amount of compensation in Monthly Income Scheme of Post office for a term of six years in joint name of claimants who will be entitled to receive monthly interest on post office MIS account supra as well as full amount of MIS on its maturity.

No order as to costs.

(Ajay Rastogi), J.